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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

W. A. HAILLING,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

No. 1042

SUPPLEMENTAL AND REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

L. E. GWIEN,
Attorney for Petitioner.

INDEX.

	Page
I. Government Brief Evades Issues	1
II. Indictment Does Not State An Offense	1-9
(a) Validity thereof should be determined by provisions of statute alleged to have been violated and not by regulations not mentioned in the indictment	2-3
(b) Distinction made in government brief between meaning of the words "prescribe" and "issue" not material in construction of Treasury Decision No. 2	3-4
(c) Powers and duties of the Secretary of the Treasury with respect to order forms transferred solely to Commissioner of Narcotics and not distributed between that official and the Commissioner of Internal Revenue	5-9
(d) Treasury Regulations, incorrectly stating provisions of statute, responsible for fatal defect in the indictment	9
III. Conviction Herein Rests On Arbitrary and Unconstitutional Application of Statute	9-18
(a) Reply to inaccurate statements and unsupported conclusions in the brief for the government	10-12
(b) Recital of additional material undisputed facts, showing petitioner convicted for professional acts that did not constitute any violation of federal law	13-18

INDEX—(Continued).

Page

IV. Supplemental Matters.

(a) To sanction administrative practices herein shown would be in practical effect an amendment of the Federal Narcotic Laws by judicial construction or evasion 18-20

(b) Administrative regulations and practices have created such confusion and uncertainty as to the scope and operation of Federal Narcotic Laws that justice to physicians requires a clarification thereof by the Supreme Court 20-21

V. Appendix.

(a) Subsection 2, Section III, Treasury Decision No. 2 23

(b) Art. 67, Regulations No. 5 (Bureau of Narcotics) 23

(c) Material part, Art. 89, Regulations No. 5 24

CITATIONS.

Cases:

Fleisher v. United States, 302 U. S. 218 2

Linder v. United States, 268 U. S. 5 ..... 12, 19

Re Land of Five Civilized Tribes, 199 F. 811, 820 4

United States v. Jin Fuey Moy, 241 U. S. 394 7

Statutes:

Act of March 3, 1927 (44 Stat. 1381)

Section 4 (a) (44 Stat. 1382; 5 U. S. C. 281c) 5, 6, 7

Section 4 (b) (44 Stat. 1382) 6, 7

CITATIONS—(Continued).

Page

Act of June 14, 1930 (46 Stat. 585)

Section 3 (b) (46 Stat. 585, 586; 5 U. S. C. 282b (b)) 5, 6

Harrison Narcotic Act of Dec. 17, 1914 (38 Stat. 785, 786) 7, 9

Section 2554 (a) and (c) of the Internal Revenue Code (26 U. S. C. 2554 (a), (c)) 2

Section 2606 of the Internal Revenue Code (28 U. S. C. 2606) 6, 7

Treasury Decisions and Regulations:

Treasury Decisions No. 2 (Bureau of Narcotics), Issued July 1, 1930 ..... 3, 5, 6, 7, 8, 23

Treasury Regulations No. 5 (Bureau of Narcotics), effective June 1, 1938 ..... 5, 8, 9, 20, 24

Miscellaneous:

"Drug Addicts Are Human Beings" by Henry Smith Williams, M.D., B.Sc., L.L.D. 20

Address on Narcotic Problems by Congressman John M. Coffee 20

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MAY IT PLEASE THE COURT:

The brief for the Government, opposing the petition for certiorari herein, does not fairly meet the issues presented by the petition. It rests its argument in technicalities and conclusions that disregard material undisputed evidence.

Our reply thereto, involving a further consideration of departmental regulations and material facts, will be supplemented by a presentation of matters deemed relevant in emphasizing the general importance of the questions actually raised by the petition, these, broadly stated, being:

A. Whether the indictment states an offense under Section 2554 of the Internal Revenue Code.

B. Whether the conviction of petitioner rests upon an arbitrary and unconstitutional application of Section 2554 of the Internal Revenue Code.

These will be considered in the order stated.

(A)

The brief for the Government at page 10 thereof apparently concedes that under the authority of Fleisher vs. United States, 302 U. S. 318 the indictment herein is fatally defective if its validity is to be determined alone by the provisions of the applicable statute (I. R. C. Sec. 2554). But it defends the validity of the indictment on the grounds that the statutory requirement with respect to order forms has been changed by Treasury Decisions and Regulations, made under authority delegated by statute, and that such delegation of authority was a valid exercise of legislative power (Gov't Br., pp. 1-16).

The indictment, however, does not charge a violation of Treasury Regulations but the violation of a statute, and in that situation it would seem that its validity should be determined by the provisions of the statute as written. Counsel for the accused in preparing his defense should be able to determine whether the indictment states an offense under the applicable statute by comparing the indictment with the statute without being required to go further and examine a mass of confusing if not conflicting departmental regulations.

If correct in that view, the Treasury Decisions and Regulations are immaterial. The indictment should either have charged a violation of the statute as written or a violation of regulations that changed its provisions.

But the government contention that the Secretary of the Treasury has conferred on the Commissioner of Internal Revenue the power to issue order forms rests upon an interpretation of Treasury Decisions and Regulations so extremely technical that such contention may aptly be designated as a process of hair-splitting.

That interpretation, in substance, rests upon a fine distinction which government counsel make between the word "prescribed," used in the applicable treasury decisions, and the word "issued," appearing in the statute, as these relate to order forms. On the basis of that distinction they contend that Treasury Decision No. 2 (set out at pages 52-55 of our original brief) distributes the statutory powers of the Secretary of the Treasury with respect to order forms between the Commissioner of Narcotics and the Commissioner of Internal Revenue so that the former is charged with the duty of *prescribing* and the latter with the duty of *issuing* such forms. The "prescribing of forms and order forms under any of the above acts," is among the duties and powers conferred on the Commissioner of Narcotics by Section III of Treasury Decision No. 2 but no mention of such forms is made in Section V thereof which is a blanket authorization to the Commissioner of Internal Revenue to exercise powers not conferred on the Commissioner of Narcotics by Sections III and IV of the Treasury Decision.

Irrespective of the right of the Secretary thus to distribute his powers with respect to order forms between the Commissioner of Narcotics and the Commissioner of Internal Revenue, it is respectfully insisted that no such distribution of power was made in the Treasury Decision under consideration.

"Issued" as defined by Webster's New International Dictionary means "to send out officially; to deliver by authority; to publish or utter; to put in circulation; to emit."

"Prescribed," as defined by the same authority, means "to lay down authoritatively as a guide, direction or rule of action; to impose as a peremptory order; to dictate; appoint; ordain."

But the precise definition of the two words, and nice distinctions that might be drawn in the use thereof, are not material in refuting the Government contention. The word "issued" as used in the statute is inclusive and exclusive of the power of the Secretary with respect to order forms and while the word "issue" ordinarily means to put in circulation or deliver, it is frequently used in the sense of promulgation. In Re Land of Five Civilized Tribes, 199 F. 811, 820. It was so used in the statute under consideration, and the word "prescribe" as used in the Treasury Decision was clearly intended to vest in the Commissioner of Narcotics the power with respect to order forms conferred upon the Secretary of the Treasury by the statute.

Any doubt that such is the proper construction of the Treasury Decision disappears when an examination is

made of Subsection 2, Section III of the Treasury Decision as set out at page 16 of Regulations No. 5, effective June 1, 1938, issued by the U. S. Treasury Department, Bureau of Narcotics, and Article 67 of these Regulations, setting out the procedure regarding order forms. Subsection 2 and Article 67 are set out in the appendix to this brief.

Section III, Subsection 2, of Treasury Decision No. 2, authorizes the Commissioner of Narcotics to prescribe such Regulations as he may deem necessary in the execution of the functions imposed upon him by that section but restricts the power of the Commissioner of Internal Revenue to participate in the making of regulations to those "*relating to internal-revenue taxes where no violation of the narcotic law is involved.*"

Art. 67, p. 42, Regulations No. 5, Treasury Department, Bureau of Narcotics, provides that order forms shall be "issued" by the collectors. Obviously, the word "issued" is there used in the sense of "delivered," but be that as it may, neither that article nor any other (Art. 68-89) relating to order forms, imposes any duty on the Commissioner of Internal Revenue with respect to the same, and in case of the theft or loss of the order forms the report thereof is not made to the Commissioner of Internal Revenue, but to the Commissioner of Narcotics (Art. 89, p. 47, Regulations No. 5, effective June 3, 1938). The pertinent provisions of that article are set out in the appendix.

The relevant statutory provisions, Section 4(a) and 4(b) of the Act of March 3, 1927 (44 Stat. 1381, 1382), and Section 3(b) of the Act of June 14, 1930 (46 Stat.

585, 586; 5 U. S. C. 282 b), are set out at pages 22, 23 of the appendix to the Government brief.

It will be observed from an inspection of these statutes that Section 4(b) of the Act of March 3, 1927, authorizing a distribution of powers between the Commissioner of Narcotics and the Commissioner of Internal Revenue with respect to narcotics was not incorporated in the Act of June 14, 1930, but Section 3(b) of that act only authorized the Secretary of the Treasury to confer powers vested in him by Section 4(a) of the Act of March 3, 1927, as these related to "narcotic drugs," upon the Commissioner of Narcotics.

The omission of Section 4(b) from the later act did not impair the power of the Secretary to delegate authority to the Commissioner of Internal Revenue with respect to the prohibition laws to which reference was made in Section 4(a) and to that extent it remained in full force and effect but its omission from the act that established the Bureau of Narcotics would seem to have been intended as an end of the power theretofore vested in the Secretary of the Treasury to delegate authority to the Commissioner of Internal Revenue with respect to the narcotic laws and to require that the delegation thereof be restricted to the Commissioner of Narcotics.

True it is that Section 4(b), as it relates to narcotics, has been incorporated in Section 2606 of the Internal Revenue Code, adopted since the promulgation of Treasury Decision No. 2, but the powers thereunder that may be delegated to the Commissioner of Internal Revenue are restricted to "duties which, in the opinion of the Secretary may be necessary in connection with internal

revenue taxes," this being the restriction imposed by Section 4(b) of the Act of March 3, 1927.

The Harrison Act is a "registration and taxing act" (U. S. vs. Jin Fuey Moy, 241 U. S. 394), but Section 4(a) of the Act of March 3, 1927 (5 U. S. C. 281c), reciting the powers that may be delegated under 5 U. S. C. 282 (b), for purposes of administration separates "*taxation*" from the "sale, dispensing, giving away," etc., of narcotics, and this classification is clearly recognized by Section 2606 of the Internal Revenue Code.

Treasury Decision No. 2, considered as a whole, apparently recognizes the statutory limitation for which we contend, but be that as it may, it clearly confers all the powers of the Secretary of the Treasury with respect to order forms that lawfully could be delegated to any official upon the Commissioner of Narcotics, and not upon the Commissioner of Internal Revenue. An examination of the power to *prescribe* order forms, specifically conferred by Section III of Treasury Decision No. 2, with other specific powers and duties conferred on that official by subsection 1(a-j), the exclusion by Subsection 2 of Section III of the Commissioner of Internal Revenue from participating in the making of regulations except those "relating to the collection of internal-revenue taxes where no violation of narcotic laws is involved," and the withdrawal by Section IV of that Decision of powers theretofore exercised by agents of the Commissioner of Internal Revenue, leads inevitably to the conclusion that regardless of powers that could have been conferred on the Commissioner of Internal Revenue complete and exclusive jurisdiction over order forms was vested in the Commissioner of Narcotics by Treasury Decision No. 2.

At page 15 of their brief counsel for the Government state that they are advised by the Treasury Department that it has construed the regulations as conferring authority upon the Commissioner of Internal Revenue to issue order forms, and that such function has always been exercised by that official. But such advice and practice are not consistent with the powers conferred by Treasury Decision No. 2.

Regulations No. 5, to which reference has heretofore been made, issued by the Treasury Department, Bureau of Narcotics, deal with order forms (Articles 67-90) but make no provision for the issuance thereof by the Commissioner of Internal Revenue. That official joined in the promulgation of the regulations, which were approved by the Secretary of the Treasury, but his right to participate in making regulations was expressly restricted by Subsection 2, Section III of Treasury Decision No. 2, to those that relate to "*internal-revenue taxes where no violation of the narcotic laws is involved.*" A violation of the narcotic laws being involved in a sale without order forms, the regulations with respect thereto must be construed as having been made by the Commissioner of Narcotics, the Commissioner of Internal Revenue acquiescing therein, and these, as will appear from an examination of Articles 67 and 89, preclude any finding that the regulations require the order forms to be issued by the Commissioner of Internal Revenue.

At any rate, the regulations and the practice have created a situation so confusing that it should be clarified by a decision of this court.

The indictment in this case followed the stereotyped form of indictment in narcotic prosecutions. The explanation of the use of this form is doubtless to be found in the language of the statute as set out in Treasury Regulations No. 5, issued as of June 1, 1938. While purporting to state the law as amended, no reference is made to the changes with respect to order forms, made by legislation passed subsequent to the act of December 17, 1914, but in setting out the statute as then existing (June 1, 1938) these regulations at page 3 and again at page 40 recite the statute as requiring the order form to be issued by the "Commissioner of Internal Revenue."

A prosecutor, relying on the statute as set out in these regulations, would charge a violation of the law as it existed prior to the legislation that changed the provisions of the original act with respect to order forms. This being true, the question raised by the indictment here is one of general importance that should be settled by this court.

(B)

Emphasizing bits and fragments of the evidence, and overlooking material testimony that is not fairly disputable in the record, the statement at pages 3-8 of the brief for the Government so colors the picture actually presented by the evidence as to require a further statement of material facts.

Preliminary to such statement, and without any effort to catalogue the inaccuracies and unsupported conclusions in the statement under consideration, we point out a few matters that justify the assertion above made.

1. At page 5 of their brief, government counsel state that "Dezonia went from Fulton, Tennessee (Fulton is in Kentucky), *where he was then working* (R. 107), to petitioner's office in Union City for the sole purpose of obtaining morphine." But Dezonia, while he made some trips to and from Fulton, about twelve miles from Union City, *was working in Union City and stayed there during the period covered by the prescriptions given him by petitioner* (R. 108), and it appears from undisputed testimony that petitioner when these prescriptions were given advised Dezonia to go to an institution for treatment, informed him that he would only prescribe for him until such time as he could finish his work, this being of a temporary nature, and get out of town. Petitioner was assured by Dezonia that he would enter an institution when that work was completed (R. 162, 163).

2. At page 7 it is stated: "Petitioner admitted that he knew Dezonia was an addict (R. 161, 169) and that he did not prescribe the morphine with the object of treating or curing the disease (R. 171-172)." And at page 8, speaking of petitioner, the brief for the Government further states: "Though he stated at one point on cross-examination that Dezonia had enteritis and sciatica (R. 198), he did not claim that he was treating Dezonia for these or any other ailments or that he prescribed the morphine for purposes of treatment (see R. 161-162, 171-172, 196-197, 198-199, 199-200)." But over and over again petitioner stated that he prescribed for Dezonia on account of his "highly nervous state" and to relieve his "pain and suffering" (R. 161, 162, 197, 198), including the pain he was suffering from sciatica and enteritis (R. 198, 199, 200).

It appears without dispute in the record that morphine is not a curative but a sedative; to relieve pain is the reason why it is prescribed or administered by physicians but the Government tried this case on the theory that prescribing it to relieve the pain of an addict did not constitute treatment of a patient but a sale of drugs; that an addict could not be properly treated outside an institution and at pages 25, 26 of its brief, opposing the petition for a rehearing, filed in the Circuit Court of Appeals, it was emphatically asserted that an addict "cannot be satisfactorily handled or treated outside of an institution," and that treatment elsewhere is not in accord with "recognized medical practice." That brief, of course, is not before this court but at pages 8 and 9 of their brief herein Government counsel adopt substantially the same theory. Such a theory is equivalent to a nullification of the decision of this court in Linder v. United States, 268 U. S. 5.

3. At page 19 of the Government brief it is stated: "It was Dezonia's appetite, not the professional judgment of petitioner, that determined when and in what quantities the drug would be provided." The statement thus quoted is an unsupported assertion and nothing more. It is directly contradicted by petitioner's undisputed testimony that he exercised his own judgment in prescribing for Dezonia and never gave him or any one else all the morphine his craving required (R. 162, 171, 172).

4. At page 8, the brief for the Government emphasizes the testimony of petitioner that he did not write "drug addiction" on narcotic prescriptions written by him and states at page 19 that the Dezonia prescriptions

had the false notation "For enteritis" or "for sciatica" written on them. As to the latter assertion, the sole basis thereof is the testimony of the addict Dezonia, an inmate of a State Institution for the treatment of mental diseases at the time of the trial, attending court under guard, and regarded as a "psychiatric problem" by physicians (R. 249). Dezonia, in all probability, would not have been allowed to testify at all if seasonable objection had been made to the admission of his testimony. It is doubtful whether his diagnosis of his own condition has sufficient probative value to be accepted against the positive testimony of petitioner that Dezonia did have enteritis and sciatica. As to the failure to write "drug addiction" on the prescriptions, and putting thereon some notation or symbol that would cause them to be filled, the explanation thereof is probably to be found in the administrative construction of the narcotic laws that nullifies the interpretation thereof by this court in the Linder case—an administrative interpretation that caused narcotic agents to advise druggists that they could not lawfully fill a prescription issued to an addict (R. 216). At any rate, the false representations of bodily pain, made by decoys acting under the express instruction of federal narcotic agents—a course of fraudulent conduct that is a reproach to any official agency—puts the Government in a situation in this record where it is not in a position to complain of a lack of candor on the part of a physician seeking to alleviate human suffering in the exercise of his apparent legal rights under the law as interpreted by this court in the Linder case.

The Facts Further Considered.

The counts on which convictions were had involved prescriptions issued to Dezonia. The reasons why petitioner prescribed for him for a *limited period* (R. 161, 162, 198-200), and the facts relating to Dezonia's afflictions and the pain he suffered have been recounted in sufficient detail in our original brief herein (Br. pp. 25, 26), but to emphasize petitioner's testimony, not contradicted on this point by any evidence in the record, that he never prescribed morphine for any one except for a limited period (R. 153), and to show that he followed that course in treating Dezonia, we quote from petitioner's testimony as narrated in the record as follows:

> "Frequently, and particularly in June, 1940, the witness advised Dezonia to go to an institution for treatment, and in June, Dezonia showed him a letter from Lexington, Kentucky, arranging for his going in an institution, which he said he was going to do as soon as he finished his Union City contract. Witness believed that the Government had an institution for the treatment of drug addicts.
>
> 'Q. You may state whether or not, on advising him that he should go to an institution, you told him you would only take care of him until such time as he could get out of town?
>
> A. Yes, sir; he is an incurable addict.
>
> Q. He shortly thereafter did go to an institution?
>
> A. Yes, sir.'"
>
> (R. 162, 163)

Whether or not Dezonia's pain was caused by want of drugs and "severe sinus" (R. 114-115) or a combination of these and other causes, it is clear of doubt that he complained of acute pain and was suffering intensely when petitioner prescribed narcotics for him, and that pe-

titioner issued some of these prescriptions, if not all of them (R. 162), without charge to Dezonia, these facts appearing from the latter's own testimony (R. 116).

Counts I-VII of the indictment involved prescriptions issued to Mrs. Charles Anderson (R. 6-13); Counts VII and IX prescriptions issued to J. M. Cooksey (R. 14, 15), and Counts X to XVII prescriptions to Dezonia (R. 16-24).

As appears from the statements and citations at page 49 of our original brief herein with respect to the transactions with Mrs. Anderson and Cooksey, involved in the counts on which petitioner was acquitted, *both Mrs. Anderson and Cooksey either had or claimed to have diseases other than addiction from which they suffered pain when they consulted petitioner and were given prescriptions for narcotics.* Cooksey, to whom two prescriptions were issued, had a swollen leg, and in addition to prescribing morphine for him, petitioner also prescribed an electric bandage and advised an operation (R. 163, 164, 73, 87). Cooksey, used as a decoy by narcotic agents (R. 119), and later arrested on a charge of impersonating a federal official (R. 89) was not used as a witness in either of the trials of petitioner. The woman referred to in Counts I-VII as "Mrs. Charles Anderson" was also a decoy. She testified under the name Louise Maynard (R. 98). She had been convicted for a violation of the federal narcotic laws (R. 101); she was separated from her husband whose name was Oxenheim (R. 99). She registered and lived at Memphis hotels or rooming houses under the name of Mrs. Benrino (R. 100), and also had lived with a gambler named Lamonica to whom she was never married (R. 99). She had frequently

served as a decoy for federal narcotic agents, traveling with them from place to place (R. 70, 81, 82), and they considered her "plenty smart" (R. 79). One of these agents, introducing her to petitioner as his wife (R. 70, 102), prior to such introduction, had instructed her to state to petitioner that she was suffering from neuritis R. 75), and this she did (R. 60). Diagnosing her ailment as menopausal neuritis (R. 152), petitioner in addition to prescribing narcotics then and there gave her a serum injection for that condition and also prescribed hormone tablets for her (R. 154, 155, 102, 60, 61).

As to prescriptions other than those directly involved in the indictment, it appears, as stated at pages 48-49 of our original brief in support of the petition, a statement supported by record citations there given, these prescriptions were issued to persons who were suffering from serious diseases other than addiction, such diseases including syphilis, tuberculosis and cancer.

All prescriptions, involved in this case, were filled by registered druggists in Union City, Tennessee, where petitioner lived and practiced his profession; records thereof were duly kept, these being available for inspection and inspected by narcotic agents (R. 43, 88); prescriptions issued by petitioner in the course of a "successful and extensive" practice of medicine (R. 211, 46, 52, 148, 149) were not excessive as to numbers nor unusual as to quantities prescribed but were in accord with the customary practice of physicians in that community (R. 45, 52, 89, 94); narcotic prescriptions issued by petitioner constituted only an inconsequential part of his professional work, and with respect to the use of narcotics his practice was in line with that followed by many reputable physicians (R. 45, 95, 250, 244).

Dezonia himself testified that "reputable physicians" in many parts of the country gave him prescriptions similar to those given him by petitioner (R. 115, 116).

That petitioner in issuing prescriptions did not go beyond the limit of legitimate practice as recognized by physicians generally is further shown by the testimony with respect to narcotic prescriptions to one Welch, an addict who also had cancer of the stomach, petitioner's prescriptions being for smaller quantities than those prescribed for Welch by other doctors (R. 53, 204). In connection with the prescriptions issued by petitioner to Welch, it is important to note that he refused to prescribe for that addict at all until he had received communications from W. M. Miles, Mayor of Union City, and from the County Judge of the county in which it is located (R. 209-211).

The letter of the County Judge illustrates the dilemma that often confronts a physician, dealing with an addict, and we quote same as follows:

> "Mr. J. W. Welch, a confirmed narcotic addict with whom you are well acquainted, is begging for a prescription.
>
> I have been told he cannot live without it. If you can give him a prescription without compromising yourself, it will be all right with me."
>
> (R. 209, 210)

The letter of Mayor Miles, a brother of the United States Marshal for the Western District of Tennessee, both of whom are shown by the record to have conferred with Dezonia (R. 46, 86, 87, 111), admirably states the

criterion by which the duty of a physician should be measured. We quote therefrom as follows:

> "This man is, of course, so I am told, a seasoned addict, and my judgment as to when and whether a prescription should be given him would not be worth the paper it was written on. It occurs to me that, as a physician of long years of experience, having had a very successful and extensive practice, your own opinion and judgment in the matter should be your sole guide."
>
> (R. 211)

The practice of other physicians, however extensive, does not excuse a violation of the narcotic laws, nor does the opinion of public officials, however honestly it may be entertained, excuse such a violation, but such practice and opinions show the importance to physicians generally and to the public of the questions presented by the petition for certiorari.

In concluding our consideration of the facts, there is one feature of the argument made by the Government to which response should be made. At pages 19 and 20 of their brief, Government counsel contend that the issue of good faith was decided adversely to the contention of petitioner under a charge that must be presumed to have been a full and correct statement of the applicable law. In reply we state, first, that there was no evidence of bad faith in prescribing for Dezonia but at most a mistake of judgment or a difference of opinion as to what constitutes the proper practice in a case like that of Dezonia and therefore no question for the jury; and, second, that the failure then and there properly to instruct the jury when medical experts, introduced by the

Government, testified that the law prohibited a physician from prescribing narcotics for an addict and the failure to limit the evidence of such experts to testimony as to what constitutes a generally recognized or accepted standard for the treatment of addicts, greatly weakens if it does not destroy the presumption that the jury was properly instructed as to the applicable law. In this connection, we state our willingness to stipulate, if such is permissible under the practice of this court, as to the instructions actually given by the court on the points referred to by Government counsel.

SUPPLEMENTAL MATTERS.

In stating or further emphasizing matters of importance which should be considered in determining whether the petition herein should be granted, there are two points, each affecting the general administration of the narcotic laws, and fairly raised by this record, which we bring to the attention of the court.

I.

To Sanction Administrative Practices Herein Shown Would Be In Practical Effect An Amendment of the Federal Narcotic Laws By Judicial Construction Or Evasion.

The statute says nothing about addicts (I. C. R. Sec. 2554 and exceptions thereto.)

Narcotic agents, as shown by undisputed evidence herein, advised druggists that it was unlawful to fill a prescription issued by a physician to an addict (R. 216).

Medical experts, testifying for the Government, stated they would not prescribe narcotics for an addict, regardless of the suffering or consequences of such refusal, because they understood the federal law to prohibit a physician from prescribing narcotics for an addict unless he also had some other disease (R. 134).

The statutory exception under consideration (I. R. C. Sec. 2554, sub sec. C, par. 1), makes no distinction between treatment to relieve pain and that intended to effect a permanent cure, and, as we construe it, does not limit the right of a physician to prescribe or administer narcotics to addicts to such as are under restraint or suffering from some disease in addition to addiction but allows a physician in the exercise of his professional judgment to administer narcotics to alleviate suffering or protect an addict against the consequences of a sudden withdrawal of narcotics used by him.

But be that as it may, the question thus presented, affecting many physicians, and particularly in view of evidence introduced by the government and contentions it makes in this case, is one of sufficient importance to call for a construction and application by this court of the narcotic statute to prescriptions issued by a physician under the circumstances shown by the record in this case.

The perilous uncertainties to physicians, resulting from an administration of the narcotic laws that confines within narrow limits if it does not entirely nullify the rule pronounced by this court in Linder vs. U. S., 268 U. S. 5 has been the subject of Congressional and other

discussions,* and while no hard and fast line may properly be drawn between what constitutes the sale of drugs and the practice of medicine that line may be drawn with sufficient clearness to protect a physician against what seems to be an arbitrary interpretation of the statute by administrative agencies. At any rate, the meaning and scope of the statute should be made sufficiently clear by the construction thereof by this court that an intelligent physician may understand both his rights and his responsibilities under that statute.

II.

Administrative Regulations and Practices Have Created Such Confusion and Uncertainty as to the Scope and Operation of Federal Narcotic Laws that Justice to Physicians Requires a Clarification Thereof by this Court.

Chapter VIII, Art. 167, Regulations No. 5 of the Bureau of Narcotics, effective June 1, 1938, reads as follows:

> "Art. 167. Purpose of issue.—A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of narcotic drugs is upon the practitioner, but a corresponding liability rests with the druggist who fills the prescription. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics

* "Drug Addicts Are Human Beings" by Henry Smith Williams, M.D., B.Sc., L.L.D. (Published in 1938 by Shaw Publishing Co., Washington, D. C.), including a "Statement of the Narcotic Problem" by Congressman John M. Coffee of Washington; address of Congressman John M. Coffee in the House of Representatives on September 19, 1940.

> sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of the act; and the person filling such an order, as well as the person issuing it, may be charged with violation of the law." Pages 74-75.

In so far as it defines the rights and responsibilities of physicians the foregoing regulation is about as clear as mud.

What is a "legitimate medical purpose"? Does it include the relief of pain whether resulting from a withdrawal of drugs or from some other cause? Of course, a prescription that is not in the "course of professional treatment" does not bring a physician within the exemption to the statute, but what constitutes "professional treatment" of an addict? Does it include one or more prescriptions of narcotics to an addict to relieve pain incident to addiction or to avoid the consequences of a sudden withdrawal of drugs? The Linder case would seem to require an affirmative answer to these questions, but the regulations and administrative interpretation thereof, as shown by the record in this case, leave the matter in such doubt that a physician, administering or prescribing narcotics for an addict not under restraint, although for a limited time and not in excessive quantities, acts at his peril. Any prescription of narcotics for an addict would keep him "comfortable" pro tempore, but what is meant by "maintaining his customary use" as that term is used in the regulation? And for how long?

CONCLUSION.

In conclusion it is respectfully submitted that the Government brief evades the issues that are fairly presented by the record and that these present questions of general importance that should be settled by this court.

L. E. GWINN,
Attorney for Petitioner.